Sub-sections (i) and (ii) of section 112 of the Criminal Procedure are as follows :—

112 (i) A police officer making a police investigation under this Chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined.

(ii) Such person shall be bound to answer truly all questions relating to such case put to him by such officer other than questions the answers to which would have a tendency to expose him to a criminal charge or to penalty or forfeiture.

Now, if the appellant had made at the police investigation a statement contradictory to the contents of his letter, he would have exposed himself to a criminal charge for giving false information to the police. Therefore he, the appellant, persisted in making the same statement at that police investigation as he had done in his letter, even though, according to himself, such statement was false, and what was true was the evidence he gave at the preliminary inquiry.

Accordingly the appellant, in making what he himself has stated was a false statement at the police investigation, is protected by the provisions of sub-section (ii) of section 112 of the Criminal Procedure Code, which allows a person not to answer truly any question which would expose him to a criminal charge.

Hence, on that second ground this appeal must succeed and the conviction and sentence quashed.

Appeal Allowed.

GOVINDASAMY v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Willan, C.J.), Malayan Union, Murray-Aynsley, C.J. and Bostock Hill, J.) October 15, 1947]

Penal Code, S. 193 — Giving False Evidence — Alternative form of charge — Criminal Procedure Code, s. 116.

In this case the appellant was convicted on his plea of guilty under S. 193 of the Penal Code, in that he made contradictory statements in a police investigation and during the ensuing preliminary inquiry. The appeal was on the issue of law that the charge which was in the alternative, was bad in that a statement made in the course of a police investigation cannot be linked with evidence given during a judicial proceeding so as to form the basis of an alternative charge under S. 193 of the Penal Code.

Held, that alternative charges based on contradiction between a statement made in the course of a police investigation and evidence given in the course of a preliminary inquiry in the same matter will lie.

Case referred to :—

(1) *Ramamoorthy v. Public Prosecutor* (1948) M.L.J. 43.

CRIMINAL APPEAL.

R. Ramani for the Appellant.

C. H. Whitton (Crown Counsel) for the Respondent.

The judgment of the Court of Appeal was given by :—

Willan, C. J. : — In this case the appellant was convicted on his plea of guilty under section 193 of the Penal Code, in that he made contradictory statements in a police investigation and during the ensuing preliminary inquiry.

The appeal is on an issue of law that the charge, which was in the alternative, is bad in that a statement made in the course of a police investigation cannot be linked with evidence given during a judicial proceeding so as to form the basis of an alternative charge under section 193 of the Penal Code.

In the appeal of *Ramamoorthy v. Public Prosecutor*[1] we have decided that such an alternative form of charge lies. In this appeal there is not the added complication which was present in the appeal just mentioned, and therefore this appeal is dismissed and the conviction and sentence of eighteen months rigorous imprisonment maintained.

Since the appellant has been on bail pending appeal, the sentence will commence to run from the date of this judgment, taking into account that the appellant has already served part of his imprisonment from the 1st to the 15th July, 1947.

Appeal Dismissed.

ALI BIN HAJI ABDULLAH v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Murray-Aynsley, C.J.), Singapore, Spenser Wilkinson and Brown. J.J.) October 29, 1947]

Penal Code Ss. 299 and 300 — Death caused in consequence of rape — Whether conviction for murder will stand — Misdirection.

In this case a young girl of about 10 years was found dead and the medical evidence disclosed that the cause of death was violence employed in the course of a rape. There was no indication of any violence other than that used in effecting the rape. The accused was convicted of murder.

Held, (i) that as there was no indication in this case of any intention other than to rape or of any violence other than that necessary to effect the rape the conviction for murder cannot stand; (2) that there was a misdirection in the summing-up of the learned judge and that this prevented the substitution of a conviction for any lesser offence.

Case referred to :—

(1) *Shambu Khatri v. Rex* (1924) 3 Patna 410.